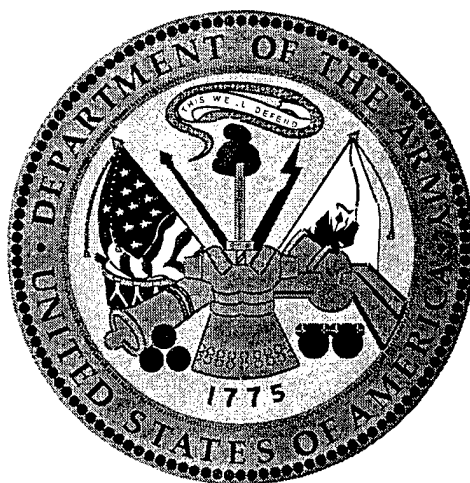


RESERVE COMPONENT JAG CORPS PERSONNEL POLICIES HANDBOOK



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Charlottesville, VA 22903-1781

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600 Massie Road
Charlottesville, VA 22903-
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600 Massie Road
Charlottesville, VA 22903-1781

The Judge Advocate General's School
Charlottesville, Virginia 22903-1781
1-800-552-3978 and Extension / Commercial 1-804-972-6+ x300
DSN 934-7115 and Extension / fax 1-804-972-6386
Guard and Reserve Affairs (JAGS-GRA) - x380
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International Law Division (JAGS-ADI) - x370
TJAGSA e-mail last name first and middle initial@hqda.army.mil

National Archives and Records Administration Regional Records Services
9700 Page Boulevard, St. Louis, MO 63132-5200
1-314-538-4261

JAGC Personnel Management Office (PMO)
Commander, AR-PERSCOM, ATTN: ARPC-OP
9700 Page Boulevard, St. Louis, MO 63132-5200
1-800-325-4916

Appointments
Commander, Total Army Personnel Command, ATTN: TAPC-OPD-RA
9700 Page Boulevard, St. Louis, MO 63132-5200
1-800-325-4898 / 1-314-538-3583

Promotion Directorate
Commander, Total Army Personnel Command, ATTN: TAPC-MSL
9700 Page Boulevard, St. Louis, MO 63132-5200
1-314-538-3801

United States Army Reserve Command (USARC)
Office of the Staff Judge Advocate (AFRC-JA)
1401 Deshler Street, S.W.
Atlanta, GA 30330-2500
1-800-359-8677 / 1-800 359-8483

National Guard Bureau, Judge Advocate
NGB-JA, Room 2E425
2500 Army, Pentagon
Washington, DC 20310-2500
Commercial - 1-703-693-3814

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SECTION I. INTRODUCTION

1-1. General.

a. This Handbook provides general personnel information to judge advocate (JA) officers in the United States Army Reserve Components: U.S. Army Reserve (USAR) and Army National Guard of the United States (ARNGUS) and is current as of 1 September 1997. Submit recommended changes for this Handbook to: Office of The Judge Advocate General, Guard and Reserve Affairs Division, ATTN: JAGS-GRA, Charlottesville, VA, 22903-1781; fax 804-972-6386.

b. The Judge Advocate General (TJAG) exercises personnel management authority over commissioned officer personnel (excluding GOs) within the Judge Advocate General's Corps (JAGC) (Army Regulation (AR) 600-3, para. 2-10). Many of these functions have been delegated to the Director, Guard and Reserve Affairs Division. This division is a part of the Office of TJAG and is located at The Judge Advocate General's School (TJAGSA) in Charlottesville, VA. The Officer Personnel Management Directorate (ARPC-OP) of the U.S. Army Reserve Personnel Command (AR-PERSCOM) in St. Louis, Missouri conducts most routine personnel management functions for USAR JAs. Individual State Personnel Directorates conduct most management functions for ARNGUS JAs, but the Chief, National Guard Bureau (NGB) has overall responsibility for federal recognition of JA personnel in the Army National Guard of the United States as a reserve component of the U.S. Army. The NGB, ARNG Readiness Center, Personnel Services Division (NGB-ARP-C), 111 South George Mason Drive, Arlington, Virginia 22204-1382, (1-703-607-7151, fax 1-703-607-7184 DSN 327-x), processes and manages National Guard appointments and personnel strength.

1-2. Applicability. This Handbook provides general personnel information to all USAR and NG JAs (55A and 55B Military Judges). The Enlisted Personnel Directorate, AR-PERCOM or NGB ARNG Readiness Center manage the enlisted force. Citations to applicable regulations are made where appropriate. Before acting on a significant personnel action, review the referenced regulatory guidance. The masculine or feminine gender used in this Handbook applies to both men and women, except when otherwise indicated.

1-3. Reserve Conference on the LAAWS Bulletin Board.

1-4. Army Weight Control Program. This Army Chief of Staff program, in AR 600-9, affects professional schooling, promotion, command selection, and retention. Paragraph 15 provides that reserve soldiers who do not meet the body fat standards will not be permitted to enter on AD, ADT, or ADSW (active duty for special work - in support of the reserves), or in AGR status. Paragraph 20d states that soldiers who are overweight are non-promotable (to the extent such non-promotion is permitted by law), will not be assigned to command positions, and are not authorized attendance at professional military schooling (with very specific exceptions).

Paragraph 21g provides that soldiers who do not make satisfactory progress after a six month period and for whom no medical reason exists to cause the overweight condition may be subject to further action. Paragraph 21k(1) provides that a soldier may be subject to separation proceedings if the soldier exceeds the body fat standard within 12 months following removal from the weight control program if there is no underlying or associated disease process causing the condition.

1-5. Information websites. In addition to the information contained in this handbook, information affecting RC JAG personnel may be available at the following websites: <http://www.army.mil>; www.army.mil/usar; www.jagcnet.army.mil; www.ngb.dtic.mil; www.army.mil/usar/vacancies.htm; www-usappc.hoffman.army.mil; and www-perscom.army.mil.

SECTION II. APPOINTMENTS.

2-1. JAGC Appointments. Appointments in the United States Army Reserve are made in accordance with (IAW) AR 135-100 (which is now printed in the Reserve Components Personnel Update Issue 23). Army National Guard appointments are governed by AR 135-100 and National Guard Regulation (NGR) 600-100. Applications must conform to AR 135-100, para. 2-1 and 3-13, and be forwarded through proper channels. Contact the Guard and Reserve Affairs Division, The Judge Advocate General's School, Charlottesville, Virginia (22903-1781), at 1-800-552-3978, extension 380, to obtain application packets and instructions for USAR appointments. Applications for appointment with concurrent orders for Active Duty must comply with AR 27-1, chapter 13. Application forms for such requests may be obtained from the Judge Advocate General's Corps Professional Recruiting and Placement Office (JARAPS), 901 north Stuart Street, Arlington, Virginia 22203-1837. Respective State Headquarters process NG application packets through NGB.

a. Prerequisites. The prerequisites for appointment are:

(1) Age. Be at least 21 years old and be able to complete 20 years of creditable retirement service before reaching age 55 (prior service may count). In addition, for appointment as a first lieutenant, be less than 33 years old; for appointment as a captain, less than 39.

(2) Citizenship. Be a United States citizen, permanent resident alien or alien serving or who has served in the U.S. Armed Forces.

(3) Be of good moral character.

(4) Possess qualifications of potential leadership, and have the ability to deal effectively with people.

(5) Receive a favorable National Agency Check.

(6) Pass a Type A medical examination (Army Regulations (AR) 40-501, para. 9-10a(5)).

(7) Be a graduate of an American Bar Association (ABA) approved law school.

(8) Be admitted to practice law and have membership in good standing of the bar of the highest court of a State or of a Federal Court. Law students may apply during their final semester; however, if approved, the individual must be admitted to the bar before offered an appointment.

b. Appointments.

(1) USAR Troop Program Unit (TPU) Positions. These RC JA's participate regularly in a minimum

of 48 four-hour drill periods per year in addition to one two-week active duty period as members of units, Judge Advocate General Service Organizations (JAGSOs), or judge advocate sections of divisions, brigades, or other units. An application for a TPU assignment must include a statement from the unit commander indicating, by paragraph and line number, which unit vacancy the individual is applying to fill (AR 135-100, para. 2-3a(3)). No applicant will be approved for appointment and assignment to a JA position in a USAR TPU if a qualified JA officer assigned to the Individual Ready Reserve (IRR) is available in the geographic area.

(2) Individual Mobilization Augmentee (IMA) Positions. These RC JA's are assigned to Active Component organizations which require rapid expansion during mobilization or national emergency. The IMA trains with the assigned organization at least two weeks a year, but has no drill requirements.

(3) ARNGUS Positions. Each of the fifty four National Guards selects its own officers. TJAG authorizes appointments in the JAGC. Applications for appointments are obtained directly from the unit to which an individual seeks appointment.

c. Entry Grades. An individual's grade or rank is determined by crediting Active and qualifying Reserve Component commissioned service plus three years constructive credit for graduation from an ABA approved law school. The same time period is only counted once (i.e., Reserve commissioned service while attending law school would be three years, not three years service plus three years for law school). The total years of service credit authorized determines the entry grades as follows:

<u>Commissioned Service Credit</u>	<u>Entry Grade</u>
3 years but less than 7 years	first lieutenant
7 years but less than 14 years	captain
14 years but less than 21 years	major

Refer to Table 2-1 attached for the current pay scale.

d. Initial Training. Company grade Reserve judge advocates must complete the Reserve Component Judge Advocate Officer Basic Course (JAOBC) within two years of enrollment; Field grade officers must complete The Judge Advocate Officer Advanced Correspondence Course (JAOAC) within two years of enrollment. [All reserve officers must enroll in these respective course immediately upon receiving their appointments. Reserve officers under conditional appointments must not fail to satisfy these educational requirements or they risk termination of their appointment. See paragraph 6-2] All newly appointed officers who have not completed an

Officer Basic Course must attend a two week resident phase of training at Fort Lee, Virginia. This phase of the Basic Course is offered three times a year. USAR officers should contact the JA Personnel Management Officer (PMO), Army Reserve Personnel Center (ARPERCEN), at 1-800-325-4916 to arrange their attendance. ARNGUS officers should contact the Army National Guard Advisor, The Judge Advocate General's School at 1-800-552-3978, extension 380 after coordination with their respective State training officers. The nonresident phase of the Basic Course consists of correspondence course materials developed at The Judge General's School. Course enrollment forms (DA Form 145) are obtained from the unit of assignment or the Guard and Reserve Affairs Division, TJAGSA.

e. Service Obligation. Effective 1 June 1984, all personnel entering the service incur an 8 year statutory obligation. This means that personnel remain in their military status and are subject to mobilization even if they decide to become inactive members of the Reserve. An exception is granted to service agreements executed before 1 June 1984 which specify a 6 year statutory obligation (AR 135-91, Chapter 2).

2-2. JAGC Officers Leaving Active Duty. In accordance with AR 140-10, para. 2-29b(1) and (2), JA officers leaving active duty have priority for assignment to Reserve Component JA positions because they already have military legal training and experience. The Guard and Reserve Affairs Division sends information about officers leaving active duty to senior Reserve JAs with responsibility for the geographic area in which the officer intends to relocate.

2-3. Branch Transfers. Officers of other branches cannot directly branch transfer to the JAG Corps but must request a JAG appointment (AR 140-10, para. 3-1). Commissioned officers of another branch may request reappointment as a JA officer under the provisions of AR 135-100, Chapter 3, Section IV, and AR 140-10, Chapter 3, Section I, or NGR 600-100 as appropriate. This is a new appointment and a grade determination is made if the officer is selected. The appointment grade will usually be the same as currently held, with retention of current date of rank.

SECTION III. PROFESSIONAL DEVELOPMENT

3-1. General. Officer education consists of professional military education and branch or functional area education. Professional military education is common to all Army officers and includes leadership, command, operations, logistics, communication skills, and management. Branch or functional area education consists of education appropriate to the branch or functional area to which assigned.

3-2. Reserve Component JA Officers' Basic Course (JAOBC). This course provides basic branch orientation and training for USAR/ARNGUS officers who are appointed as JAGC officers. The course is divided into two phases. For officers who have completed another Officer's Basic Course (OBC), the entire course may be taken by correspondence. All other JA officers must take the two week Phase I course in residence at Fort Lee, Virginia. Phase II may be taken by correspondence or in residence (10 weeks) if sufficient quotas exist. Phase II of this course must be completed within two years of enrollment.

3-3. Reserve Judge Advocate Officers' Advanced Course (JAOAC). This course provides a working knowledge of the duties and responsibilities of field grade JA officers. The course is open to all JA officers who have completed JAOBC. Phase I is a correspondence course consisting of 120 credit hours of material which must be completed within two years of enrollment. Phase II is a two-week resident course held once a year at The Judge Advocate General's School. Both phases must be completed before an officer can be considered educationally qualified for promotion to major. Reserve Component student quotas may be available for the 41-week resident JA Officer Graduate Course/LL.M. Program. Details and application procedures are published periodically in the monthly bulletin, The Army Lawyer.

3-4. Military Judges' Course. This three week course qualifies individuals to preside over courts-martial proceedings, and award of MOS 55B. This course is only open to USAR JAGC officers who have been selected for assignment to Military Judge positions. National Guard JAGC officers, nominated by their State SJA, are selected for attendance by the Chief Trial Judge, U.S. Army Judiciary.

3-5 Staff Judge Advocates' Course. This two week course is given annually for SJAs and those selected for

SJA positions.

3-6. Continuing Legal Education Courses (CLE). Each year the JAG School offers more than 20 resident CLE courses which vary in length from three days to three weeks. The courses provide a practice-oriented CLE program for military attorneys. Most of the courses provide an update in a particular field of law, while some serve as advanced qualification courses for positions such as a military judge. Other courses are designed to acquaint non-lawyers with the role of the law in military activities. A complete list of available courses is published in the School's Annual Bulletin and in The Army Lawyer.

3-7. Judge Advocate Triennial Training (JATT). To ensure that Judge Advocate General Service Organization (JAGSO) units are qualified to perform operational JA functions, TJAG has established a program to develop, train, employ, and maintain competent legal skills that will be needed upon activation. The JATT program is available but not required for IRR, ARNGUS, and JA section unit officers (AR 27-1, para. 10-11). The JATT program is currently being studied and revised to enhance the effectiveness of training provided therein. Further guidance on the format and content of JATT is pending from OTJAG.

3-8. Correspondence Elective Program. The Judge Advocate General's School offers several separate subcourses in administrative law, international law, and individual research and writing. These courses are designed to allow students to continue their legal education beyond the required educational program. These elective courses are available to JAGC officers on active duty, in the Army Reserve, or in the Army National Guard who have completed the Judge Advocate Officer Basic and Graduate/Advanced Courses.

3-9. Constructive and Equivalent Credit.

a. Equivalent credit may be awarded for portions of the Basic and Advanced Courses. Equivalent credit may be granted upon satisfactory completion of essentially the same program of instruction at another military or civilian institution.

b. Constructive credit may be granted for unique, in-depth, specialized experience. Constructive or equivalent credit may be given when a student has met course qualifications or has taken a similar course at another institution. Regular military or civilian legal experience will not qualify for constructive

credit.

c. Requests for constructive or equivalent credit are submitted to the Commandant, The Judge Advocate General's School, U.S. Army, ATTN: JAGS-ADN -C, Charlottesville, VA 22903-1781.

3-10. Combined Arms and Services Staff School (CAS3). This course is not required for JA promotion. JA officers desiring to take this course should contact the USACGSC Registrar at US Army Command and General Staff College, ATTN: ATZL-SWB, Ft Leavenworth, Kansas 66027-6930..

3-11. Command and General Staff Officer Course (CGSOC). The purpose of CGSOC is to prepare officers to perform duty as brigade, division, and corps levels. A Certificate of Completion of Phase I of CGSOC is required to be eligible for promotion to lieutenant colonel. A Certificate of Completion of Phase II of CGSOC is required for promotion to colonel. The course may be taken by correspondence from the Command and General Staff College (CGSC) School of Corresponding Studies (SOC), at U.S. Army Reserve Forces (USARF) Schools, a combination of correspondence and USARF Schools, or in residence at CGSC, Fort Leavenworth, Kansas. Each year ARPERCEN announces the opportunities for USAR officers to apply for selection to the CGSOC resident course. Eligibility criteria and contents of application packets are detailed in the announcement. Most Reserve officers will take the course through USARF Schools or by correspondence. To obtain information for non-resident enrollment and an enrollment application, contact US Army Command and General Staff College, SOCS, Building 120, Room 273N, 250 Gibson Avenue, Ft Leavenworth, Kansas 66027-2314 (913-758-3401/3340/3339/3361 or DSN 720-3401). The CGSC SOC Nonresident Catalog is CGSC Circular 351-3.

3-12. Army War College, (Senior Service Colleges). The Senior Service College courses are designed to prepare officers for duty at the highest levels of the Army. Completion of the Army War College is required for promotion to general, effective 1 October 1996, under the Reserve Officer Personnel Management Act. Senior Service College courses include the Army War College, Naval War College, Air War College, National War College, Industrial College of the Armed Forces and the Inter-American Defense College and a number of fellowships. ARPERCEN and NGB solicit application packets once a year, shortly after the beginning of the

college year. Officers are selected by a screening board for participation in either the resident or correspondence program. Reserve officers interested in the War College should contact the US Army War College, Carlisle Barracks, Pennsylvania 17013 (717-245-4025/4402 or DSN 242-4025/4402).

3-13. TJAGSA Resident Courses. Reserve Component officers who wish to attend resident courses at The Judge Advocate General's School (TJAGSA) must submit applications and obtain quotas before attendance. Quotas for TJAGSA courses are managed by means of the Army Training Requirements and Resources System (ATRRS), the Army-wide automated quota management system. Information on courses, correct course title, and course number can be found in TJAGSA Annual Bulletin, DA PAM. 351-4 (U.S. Army Formal Schools Catalog), and DA PAM. 351-20 (Army Correspondence Course Program Catalog). USAR officers submit applications on DA Form 145. USAR unit members obtain quotas through their unit training offices, USAR Individual Mobilization Augmentees (IMA) and Individual Ready Reserve (IRR) officers obtain quotas from the JAGC PMO at the Army Reserve Personnel Center (ARPERCEN) in St. Louis, Missouri (1-800-325-4916). National Guard officers forward applications in accordance with their respective state's procedures to their unit training officer. The unit training officer will enter the soldier into the ATRRS.

3-14. TJAGSA CLE On-Site Programs. Each year CLE On-Site Training Programs are held throughout the country. The CLE On-Site schedule is published in The Army Lawyer. Individuals should coordinate with the Officer in Charge (OIC) of the sponsoring unit to obtain the documentation necessary for obtaining CLE credit in a specific state.

SECTION IV. ASSIGNMENTS.

4-1. General. AR 140-10 and policy letters from The Judge Advocate General (TJAG) govern the assignment of USAR officers in the Judge Advocate General's Corps. Specified JA positions require TJAG approval (AR 140-10, para. 2-26, et seq.).

4-2. Tenured Positions.

a. There are designated tenured JAGC assignments in USAR Troop Program Units. These positions include the Legal/Mobilization Support Organization Commander and the senior Staff Judge Advocate position in Army Reserve Commands (ARCOMs), General Officer Commands (GOCOMs), or other major commands. The Judge Advocate General's approval is required for assignment to any of these positions. Tenure for these positions is three years, and officers selected are expected to serve the full three years (AR 140-10, para. 2-30). Extensions to tenures will be considered on a case-by-case basis. Extensions based on lack of available, qualified JAs will be accompanied by evidence of attempts to solicit applications from officers in that region. Extensions based on operational requirements will be thoroughly documented.

b. The procedure for filling these positions requires that the unit act early enough to submit nominations for a successor at least six months before the end of the incumbent's tenure. Impending vacancies should be advertised in unit and command bulletins, command newspapers, or the Reserve Conference on the LAAWS Bulletin Board to ensure qualified officers know they may apply for the position. Copies of the advertisement should be sent to GRA. Individuals in the region in IRR or IMA positions should be notified by mail of the vacancy and application process. A list of eligible officers can also be obtained by initiating a Request for Unit Vacancy Fill (DA Form 4935-R). The DA Form 4935-R can be sent to the Major United States Army Reserve Command (MUSARC), adjacent MUSARCs, and ARPERCEN (ATTN: ARPC-OPM-P). The unit should nominate at least three candidates. The nomination packets should contain a list of all officers considered and a description of the efforts to publicize the vacancy. The following information must be submitted for each officer nominated:

(1) Personal data: Full name (including preferred name if other than first name), grade, date of rank, mandatory release date, age, address, telephone number (business and home), full length official photograph.

(2) Military experience: Chronological list of Reserve and Active Duty assignments; copies of Officer Evaluation Reports for the past 5 years (including senior rater profile).

(3) Awards and decorations: Copies of all awards and decorations; significant letters of commendation.

(4) Military and civilian education: Schools attended, degrees obtained, dates of completion, and any honors awarded.

(5) Civilian experience: Resume of legal experience.

c. Forward nominations through the area command for comment and advice of the area command staff judge advocate to TJAGSA (ATTN: JAGS-GRA, Charlottesville, VA 22903-1781) at least six months before

the tenure expires.

d. Effective 1 October 1993 all colonel and lieutenant colonel positions were tenured for three years. All other JA TPU positions which are not tenured by regulation should be limited to a four-year tour. Commanders and SJA' should develop a plan for rotation of officers after four years in the same position, including rotation between JAGSO and non-JAGSO units.

4-3. Military Judge. Nominations for TPU military judge positions must be received NLT 15 January of the year in which the tenure of the incumbent is due to expire, to ensure that the selected successor can be scheduled to attend the next Military Judge course at TJAGSA. The Chief Trial Judge makes selection for assignment as a Military Judge, MOS 55B. Paragraph 4-2 above specifies the procedures for nomination. The nomination packet will be forwarded by the LSO commander directly to TJAGSA, (ATTN: JAGS-GRA), to the Chief Trial Judge (USALSA, ATTN: JALS-ZA, Nassif Building 5611, Columbia Pike, Falls Church, VA 22041-5013). Soldiers selected as Military Judges will be scheduled to attend the Military Judge Course. If already MJ qualified, selectees will begin serving in the position on the tenure start date; if not, selectees will begin serving in the position upon successful completion of the MJ course at TJAGSA. Military Judges will be limited to a three-year tenure and are under the dual supervision of the MSO/LSO commander and Chief Trial Judge (AR 623-105, para. 3-18).

4-4. Overgrade Authorization. In units with overstrength authority, overgrade approval will be liberally applied. In all other units, overgrade will be limited to six months. Requests for approval must be submitted through USARC-SJA to OTJAG-GRA. In all cases, overgrade authorization is subject to the availability of qualified officers of the appropriate grade. Units not recruiting, or accepting for assignment, qualified officers of the appropriate grade will be denied overgrade authorization. When recruiting to fill vacancies, overgrade positions will be treated as a vacancy. Overgrade authorization will be revoked for officers not seeking vacancies appropriate to their grade, if within reasonable commuting distance. Permission to serve in a lower graded position will be granted only if there are no qualified officers of the appropriate grade available.

4-5. Individual Mobilization Augmentee (IMA).

a. The purpose of the Individual Mobilization Augmentee (IMA) Program is to provide the capability for rapid expansion of the Army from peacetime to an emergency or wartime basis by increasing the size of the active Army with USAR officers. The IMA program provides a substantial number of preselected and trained officers who can report for active duty, with minimal delay, to organizations that must rapidly increase their capabilities

to perform crucial tasks during the early phases of mobilization.

b. Eligibility. To be selected as an IMA, an officer must:

- (1) Comply with the height and weight requirements of AR 600-9.
- (2) Hold a grade not more than one grade higher nor two grades lower than the grade authorized for the position.
- (3) Be commissioned in the JAGC and hold the appropriate SSI for the position.
- (4) Be branch qualified (i.e., possess the appropriate level of judge advocate education for the grade of the designated position) or making satisfactory progress toward branch qualification.
- (5) Be able to complete at least one tour of annual training prior to mandatory removal from the Ready Reserve.

c. Federal Employees. Members of the Ready Reserve who are also Department of Defense employees may not hold a mobilization assignment to the positions which they fill as civilian employees (AR 135-133, para. 2-9). All Ready Reserve soldiers occupying "key positions" in the Federal government will be transferred from the Ready Reserve to the Standby Reserve, the Retired Reserve (if eligible), or discharged (AR 135-133, para. 2-12). Screening procedures for "key employees" are found in AR 135-133, chapter 2, section III.

d. Assignment to JAGC Individual Mobilization Augmentee (IMA) positions can be accomplished by submitting a DA Form 2976-R, Application for IMA Program Assignment, to TJAGSA, ATTN: JAGS-GRA, Charlottesville, VA 22903-1781. Some IMA positions are nominative and the request, along with data profile information, is referred to the proponent agency for selection. Assignment to other JAGC IMA positions will be made based on the requirements of the vacancy.

4-6. Voluntary Assignment or Attachment to TPU. Officers assigned to Qualified Reinforcement, Annual Training, or Individual Mobilization Augmentee Control Group may voluntarily request assignment or attachment to TPUs. The officer must complete DA Form 4651-R (Request for Reserve Component Assignment or Attachment) and submit it to the unit with the available position. The application should include a biography, copy of the applicant's ORB or DA Form 2-1, the applicant's 3 most recent OERs, and a cover letter indicating the geographical area of consideration.

4-7. Attachment For Points Only.

a. Members of the IRR Control Group and IMA program, as well as eligible members of the Standby Reserve, may participate in

Inactive Duty Training (IDT) in a non-pay status when authorized by the appropriate OCONUS Army commander, MUSARC commander, or the Commanding General, ARPERCEN, in coordination with the gaining command. DA Form 4651-R, (Request for Reserve Component Assignment or Attachment), will be used to request attachment orders from the Commander, ARPERCEN, ATTN: ARPC-ZJA-P, 9700 Page Boulevard, St. Louis, MO 63132-5200.

b. Unit commanders will not authorize members transferred from the IRR to attend training without orders. Retroactive dates of attachment are not authorized.

c. The commander of the unit to which the soldier is attached is responsible for the following:

- (1) Attendance reporting and retirement points accounting per AR 140-185.
- (2) Supervision of the soldier's training.
- (3) Performance evaluation per AR 623-105.

4-8. Overstrength. AR 140-1, para. 2-5, RC personnel Update 23, permits JA Reserve Officer overstrength, for JAs assigned to JA positions, not to exceed 200 percent without approved exception from the next higher general officer headquarters. This exception does not apply to: 1) enlisted personnel, or 2) Congressionally constrained units as detailed in the regulation. Officers will not be assigned overstrength if they are senior to the unit or section supervisor. Officers vacating command or principal supervisory positions within an organization will not be assigned overstrength within the same command or section they are vacating. Assignments may exceed 200 percent with approved exception from the next higher general officer headquarters. Requests for such additional overstrength authorizations must be submitted IAW AR 140-1.

4-9. Promotions. Commissioned officers selected for promotion may be promoted and retained in the unit if a position in the next higher grade is vacant, authorized as overstrength, (AR 135-155, para. 4-8), [or there are no qualified officers of the appropriate grade available to fill officer's current position.?] Additionally, individuals about to be promoted out of their current assignment, with no available position in their new grade, may temporarily decline the promotion (up to one year) IAW AR 135-155, Chapter 4, Officers, through 0-5, will remain on the promotion list during the declination period. However, officers declining promotion to 0-6

will be removed from the promotion list and will be considered by the next promotion board if they remain eligible for consideration.

4-10. Transfer Between USAR and ARNGUS (AR 140-10, Chapter 5).

a. Transfer from USAR. Authority to grant conditional release or final clearance to be appointed in the ARNGUS depends on the soldier's status in the USAR. A conditional release must be obtained from the USAR unit commander before appointing soldiers in the ARNGUS (AR 140-10, para. 5-1c).

(1) The CG, ARPERCEN (ARPC-ZA) is approval authority for the following:

- (a) Final clearance for IRR soldiers appointed in ARNG.
- (b) Requests for conditional release disapproved by the USAR unit commander.
- (c) Officers assigned to USAR Control Group (OADO).
- (d) Requests for conditional release of enlisted unit soldiers received within 120 days of entry on

IADT.

(2) Appointment in the ARNGUS. NGB Form 60 (Request for Clearance from USAR for Enlistment/Appointment in Army National Guard) will be prepared. NGB Form 60 and State Orders (or ARNG enlistment contract for enlisted soldiers) will be sent to CG, ARPERCEN, or the appropriate MUSARC commander. The CG, ARPERCEN, or the appropriate MUSARC commander will issue orders for soldiers transferring to ARNGUS in the same status (i.e., USAR officer to ARNGUS officer).

b. Transfer from the ARNGUS. A conditional release must be obtained from the State Adjutant General before accepting ARNGUS U.S. soldiers for USAR unit assignments. The State Adjutant General will issue transfer orders for officers.

4-11. ARNGUS Assignments. The primary factor influencing ARNGUS assignments is the needs of the ARNG.

Other factors include the grade, AOC, education and experience of the officer, along with professional development needs of the officer and the required qualifications of the position to be filled. National Guard JA's are normally assigned only to JAGC billets. The Chief, National Guard Bureau, may approve exceptions to this limitation, subject to the approval or concurrence of TJAG.

SECTION V. EFFICIENCY REPORTS AND PROMOTIONS.

5-1. General. Reserve Component promotions have been significantly changed by the Reserve Officer Personnel Management Act (ROPMA) which came into effect on 1 October 1996. ROPMA does not apply to warrant officers. ROPMA's purpose is two-fold: 1) Standardize reserve officer personnel management across the military; 2) Align the reserve system with that used in the active component. Promotions to all ranks are now on a "best qualified" basis, not a fully qualified basis. Completion of the Army War College will be a requirement for promotion to general. Although ROPMA came into effect on 1 October 1996, AR 135-155, Promotion of Commissioned Officers and Warrant Officers Other Than General Officers, has yet to be amended to reflect these changes.

5-2. Promotion Eligibility. To be eligible for promotion, officers must have minimum time in grade and meet the educational requirements shown below.

Promotion to	Education	Minimum Years Service in Grade	Maximum Years Service in Grade
Captain	Basic Course	2 years	5 years
Major	Advance Course	3 years	7 years
Lieutenant Colonel	Phase I, CGSOC	3 years	7 years
Colonel	Phase II, CGSOC	3 years	*

*No time-in-grade extension past 30 years commissioned service unless waived by Secretary of the Army for "needs of the service." In any case, a colonel may not be retained past age 60.

a. There are exceptions to the educational requirements. Officers leaving active duty are considered to be educationally qualified for promotion for three years after the date of their separation, unless they were non-selected for promotion for the next grade while on active duty. AR 135-155, para. 2-6. Officers who received conditional appointments requiring completion of educational courses within a specified time are considered to be educationally qualified for promotion if making satisfactory progress with the course. Contact TJAGSA, ATTN: JAGS-GRA, concerning a certificate of satisfactory progress.

b. First consideration for promotion by a mandatory board occurs in advance of the date in which an officer meets time in grade requirements. Therefore, officers must ensure that they are prepared for consideration for promotion about one year before their Promotion Eligibility Date. Form 5-1 is a worksheet for predicting your Promotion Eligibility Date (PED).

c. Vacancy promotion boards are convened to fill a position vacancy and the officer must meet the qualifications in the table above.

5-3. Reserve Active Status List (RASL). ROPMA requires each service to establish a Reserve Active Status List (RASL) to include the names of all reserve officers of that service who are in an active status, in the order of seniority. 10 U.S.C. Sec. 14002 & 14003. An officer must be on the RASL to be eligible for consideration for selection for promotion or for promotion. 10 U.S.C. Sec. 14004.

5-4. Promotion Consideration File (PCF).

a. Total Army Personnel Command (formerly MILPERCEN) Promotions Directorate prepares the Promotion Consideration File (PCF) for use by the Reserve Component selection boards. It should contain the following:

(1) All academic and performance evaluation reports.

(2) An Officer Record Brief (IMA/IRR JA officers) or DA Form 2-1 (Personnel Qualification Record) (USAR TPU JA officers). These documents have necessary entries pertaining to personal data, military, and civilian education, and duty assignment history.

(3) A color photograph taken within the past three years, which reflects insignia authorized at the time the promotion packet is submitted to the board. Height and weight data, and a signature must be entered on the reverse side of the photograph (AR 135-155, para. 3-3a(4)). Refer to AR 670-1 for correct wear and appearance of Army uniforms and insignia.

(4) A one page letter to the board, is strongly encouraged. Contact ARPERCEN JAGC PMO to discuss the contents of the letter.

PROMOTION CONSIDERATION FILE

	IRR/IMA	AGR	TPU	DC*	NG	Remarks**
OMPF-P-Fiche	X	X	X	X	X	1, 7
2-1			X		X	2
ORB	X	X		X	X	3
Photo	X	X	X	X	X	4
Letter to the Board President	X	X	X	X	X	5
Loose Papers	X	X	X	X	X	6

*Dual Component

**Remarks:

1. Provided by U.S. Army Reserve Personnel Center (ARPERCEN)/NGB ARNG Readiness Center as appropriate.

2. Provided by the officer's servicing personnel/ administration section.

3. Provided by an ARPERCEN personnel management officer of Dual Component, provided by ARPERCEN.

4. To be provided by the officer for the board's use or by the personnel management officer (PMO) if a current copy is available in the career management file. The photo must be current within three years.

5. Optional, but encouraged.

6. Includes Official Military Personnel File (OMPF) documents received too late to be microfiche on the OMPF (Performance-Fiche).

7. OMPF performance documents required to be included in the PCF include (listed in order of precedence):

Academic Evaluation Reports.
Officer Evaluation Reports.
Letter Reports.
Resident and nonresident course completion certificates.
Any record of adverse action.
Award Orders.
Letters of appreciation/commendation.

b. Officers in the zone of promotion are responsible for the following:

(1) Reviewing their OMPF and providing the State adjutant general or the Chief, Office of Promotions, Reserve Components, with copies of any documents missing from the file.

(2) Auditing their DA Form 2-1, when requested by the unit personnel clerk.

(3) Ensuring they have a current photograph on file at ARPERCEN or NGB ARNG Readiness Center.

(4) Taking a military physical every five years IAW AR 40-501. If overweight, ensuring their status in the weight control program is reported to ARPERCEN IAW AR 600-9. An officer whose physical is out of date or who is overweight will not be issued promotion orders (AR 600-9, para. 20d(1)).

(5) Following up with unit support personnel to ensure that evaluation reports, the DA Form 2-1, and other relevant information is submitted to ARPERCEN in time to be presented to the board.

5-5. Officer's Letter to the Board.

a. Letters to the board are optional, but strongly encouraged. The content of the letter is at the discretion of the officer. 10 U.S.C. Sec. 14106. However, in some cases, letters detract from the file because of poor grammar, spelling errors, superfluous enclosures, and inadequate preparation. The selection board will not be given any third party communications.

b. Any letter should be no more than one page; provide relevant information not contained in the OMPF; and be signed and dated. The letter should be a professional document in appearance, style, and content.

c. The following examples are good enclosures to letters: OERs missing from OMPF; letters of appreciation/commendation not in OMPF; and newly acquired diplomas, degrees and documents about professional qualifications. The letter should reference all enclosures.

5-6. Officer Evaluation Report (OER), AR 623-105.

a. The OER (DA Form 67-8) primarily provides information to make personnel management decisions. Each OER must be a comprehensive appraisal of an officer's abilities, weaknesses, and potential. Reports that are either incomplete or fail to provide a realistic and objective evaluation make it difficult to determine an officer's true potential and may hamper personnel management decisions.

b. The secondary function of the OER is to encourage officer professional development and enhance mission accomplishment. The key to this function is effective communications between senior and subordinate officers. This dialogue enables officers to learn their duties and allows raters to guide and develop subordinates.

c. DA Form 67-8-1 (OER Support Form). At the beginning of the evaluation period, the rater and rated officer should have a face-to-face discussion to develop a working copy of the rated officer's OER Support

Form. DA Form 67-8-1 contains a description of the duties and performance objectives of the rated officer. This form may be updated during the rating period and will be used to prepare the final Support Form at the end of the rating period.

d. Rating period. Reports will be submitted annually on all commissioned officers of the Ready Reserves (members who are assigned to TPU or IMA positions) and Standby Reserves (members who are ordered to active duty only upon declaration of war or national emergency) from the unit of assignment or attachment. Separate reports will also be submitted when the officer performs certain additional duty such as active duty for training (ADT); active duty for special work (ADSW); and, Annual Training (AT) of more than 11 consecutive calendar days performed by an officer in an attached status. See AR 623-105, para. 7-6n, for a detailed explanation.

e. Appeals. An OER may have administrative errors or may not accurately record the officer's potential or the manner in which duties were performed. Substantive appeals must be submitted within 5 years of the OER's completion date. Administrative appeals will be considered regardless of the period of the report (AR 623-105, para. 9-3).

f. New OERS. The Army leadership has approved a new OERS and AR 623-105 will soon be replaced by AR 600-8-18. The effective date for the new OER was 1 October 1997 for the active Army and Title 10 National Guard AGRs, 1 June 1998 for all Title 32 Army National Guard, and 1 October 1998 for the USAR. Some notable features of the new system include:

1) Reinvigorated support form process designed to facilitate leadership communication as an integral part of the evaluation process.

2) A Junior Officer Development Support Form (JODSF) to establish developmental tasks followed by performance counseling.

3) Senior Rater Accountability by reducing the number of blocks in the senior rater profile to four. The new system will allow senior raters to identify the "best" while not unduly disadvantaging "good" officers.

5-7. Promotion Boards.

a. Promotion board members are senior in rank to the individuals under consideration for promotion and no member may hold a grade below major. The board consists of five or more officers. Reserve Component JAGC officers are not considered by JAGC-only promotion boards; membership of the board is a mixture of combat arms, combat support, and combat service support officers. There are special membership

requirements for representatives from Active Components; National Guard; Individual Ready Reserve; Army Guard/Reserve; and, minorities. Normally, a selection board will include at least one officer from the competitive category of the officer being considered. 10 U.S.C. Sec. 14102.

b. The board reviews the "whole person concept" which includes: Duty performance and responsibility; experience; military and civilian education and training; and, awards and decorations. A letter of instruction (LOI) to the board gives specific guidance.

c. All promotion boards now select on the "best qualified" basis. A majority vote is required in order for a board to recommend an officer for promotion.

d. Records of promotion board proceedings are kept which include information provided to the board. Prior to convening the selection board, the eligible officer is afforded a reasonable opportunity to submit comments to any controversial information which the Secretary of the Army has determined to be relevant information that could reasonably and materially affect the deliberations of the board. 10 U.S.C. Sec. 14107.

5-8. Promotion Passover Appeals. An officer has the right to appeal non-selection to the Army Board for Correction of Military Records. AR 15-185. Use DD Form 149 for the appeal.

5-9. Voluntary Delay of Promotion. An officer who is recommended for promotion by a mandatory selection board may request a delay of that promotion for up to three years from the date on which he would otherwise be promoted. The officer's name remains on the promotion list during the period of delay. If the officer does not accept the promotion during the period of delay or before the end of the period of delay, he is removed from the promotion list and considered a one-time non-select for promotion. Officers who are twice non-select are subject to discharge rule based on rank.

5-10. Unit Vacancy Promotion (AR 135-155, para. 2-9).

a. USAR unit vacancy promotion consideration to fill a TPU vacancy is authorized under two conditions:

(1) When Commander, ARPERCEN (DARP-OPM-P), notifies the TPU commander that no qualified IRR officers are geographically available, or

(2) When the TPU commander receives the appropriate area commander's approval of the IRR non-selection on the returned DA Form 4935-R, Request for Unit Vacancy Fill (AR 140-10, Chapter 2).

b. After completing the step above, the TPU commander will complete DA Form 2464-R (USAR Unit Vacancy Promotion Recommendation) listing all officers eligible for promotion consideration. The completed

DA Form 2464-R plus a copy of the completed DA Form 4935-R will be sent to the Army Reserve Command (ARCOM)/General Officer Command (GOCOM). The ARCOM/GOCOM will request that a DA Form 2464-R be completed on all other eligible geographically available TPU officers. The ARCOM/GOCOM will send to the area commander all DA Forms 2464-R and the properly completed DA Form 4935-R for unit vacancy consideration. The area commander will conduct the Unit Vacancy Promotion Board.

- a. c. NGB 600-100 guides ARNGUS unit vacancy promotions.

SECTION VI. REMOVAL FROM ACTIVE STATUS (10 U.S.C. Chapter 1407).

6-1. Length of Service and Age. Removals are based on separate calculations for length of service and age.

Specific exceptions are found in 10 U.S.C. Chapter 1407

(1) Length of Service

a. General Officers - Reserve General Officers, except for State adjutants general and assistant adjutants general, will be removed from the Reserve Active Status List (RASL) as follows:

1) Brigadier General - if not recommended for promotion to the grade of major general, 30 days after the completion of 30 years of service, or on the fifth anniversary of the date of the officer's appointment in the grade of brigadier general. The Secretary of the Army may, at his discretion, retain in active status, a brigadier general until the date on which the officer becomes 60 years of age. Only 10 officers in the Army can be retained in this status at any one time. 10 U.S.C. Secs. 14508(a) & (c).

2) Major General - 30 days after the completion of 35 years of service or on the fifth anniversary of the date of the officer's appointment to the grade of major general. The Secretary of the Army may, at his discretion, retain in active status, a major general until the date on which the officer becomes 62 years of age. Only 10 officers in the Army can be retained in this status at any one time. 10 U.S.C. Secs. 14508(b) & (d).

b. Colonels. Colonels, who are not on a promotion list to brigadier general, will be removed on the first day of the month after the month in which the officer completes 30 years of commissioned service. [This does not apply to State adjutant generals or assistant adjutant generals.] 10 U.S.C. Sec. 14507(b).

c. Lieutenant Colonel. Lieutenant Colonels, who are not on a promotion list to colonel, will be removed on the first day of the month after the month in which the officer completes 28 years of commissioned service. 10 U.S.C. Sec. 14507(a).

d. Major. Majors, who are not on a promotion list to lieutenant colonel, will be removed on the first day of the month after the month in which the officer completes 20 years of commissioned service. 10 U.S.C. Sec. 14506.

e. Captain. Captains, who have been twice non-selected for promotion to major and are not on a promotion list to major, will be removed not later than the first day of the seventh month after the month in

which the President approves the report of the board which considered the officer for the second time. 10 U.S.C. Sec. 14505.

f. **First Lieutenant.** First Lieutenants, who have been twice non-selected for promotion to captain and are not on a promotion list to captain, will be removed not later than the first day of the seventh month after the month in which the President approves the report of the board which considered the officer for the second time. 10 U.S.C. Sec. 14504.

g. Officer recommended for promotion will be removed under criteria for the higher grade if the officer has remained in active status since being recommended for promotion.

h. **Constructive Credit.** Constructive credit awarded for education and experience is not included in calculating years of service for mandatory removal.

(2) Age.

a. The following soldiers will be removed on the last day of the month in which they reach age 60: Reserve officers in grades below brigadier general, who are not on a promotion list to brigadier general and brigadier general officers, who are not on a promotion list to major general. 10 U.S.C. Secs. 14509 & 14510.

b. The following soldiers will be removed at the end of the month in which they reach age 62: Major Generals 10 U.S.C. Sec. 14511.

c. **Exceptions.** Brigadier Generals and Major Generals who hold certain offices may be retained until age 64. 10 U.S.C. Sec. 14512(a).

6-2. Failure to Complete Military Education Requirements (AR 140-10, para. 7-5).

a. **Conditional appointments.** Officers failing to complete educational requirements, as conditions of appointment, will be discharged IAW AR 135-175, para. 4-4a; AR 27-1, para. 10-7; AR 135-155, Table 2-2.

(1) Company grade officers appointed to the JAGC must complete JAOBC within 36 months of appointment. Captains (within 42 months of their promotion eligibility date) must complete JAOAC within 24 months of their conditional appointment, conditional Federal recognition, or completion of the resident phase of the JAOBC, whichever is later.

(2) Field grade officers appointed to the JAGC need not complete JAOBC, but must complete JAOAC within 24 months of the date of conditional appointment, conditional Federal recognition, or completion of the JAOBC, whichever is later.

b. Officers failing to complete CGSOC within 3 years of the effective date of promotion to lieutenant

colonel will be discharged or retired. AR 140-10, para.7-5.

6-3. Disbarment. A JAGC officer whose license is revoked or is otherwise suspended from practice will be discharged (AR 135-175, Chapters 2 and 4; AR 140-10, para. 7-8).

6-4. Promotion Non-selection. An initial non-selection for promotion to the next higher grade constitutes a first pass-over for promotion. A second pass-over will result in removal except as noted in (AR 135-175, Chapter 4; AR 140-10, para. 7-4). In addition, failure to qualify for promotion may, depending upon rank and branch, result in removal. Majors may remain in active reserve status, after a second pass-over, until they have completed 20 years of commissioned service (not necessarily 20 "good" years). Lieutenant colonels may remain for 28 years commissioned service and colonels 30 years.

6-5. Additional Causes For Removal. Medical disability, failure to perform duty, substandard performance, failure to provide a current mailing address, and misconduct are some of the additional reasons for removal (AR 135-175, Chapter 2; AR 140-10, para. 7-8).

6-6. Exceptions. A number of exceptions to removal are found in AR 140-10, chapter 7, section II. Officers having 18 or 19 years of qualifying Federal Service for retired pay will not be removed without their consent. Officers who meet this criterion on the date removal is required will be retained to complete 20 years (AR 140-10, Chapter 7, Section II, para 7-12b).

6-7. Selective Retention of Officers (AR 140-10, Chapter 10). Generally, an officer who has completed 20 qualifying years of service will be considered by a selective retention board. Selective retention boards will convene each year during the third quarter of the fiscal year. Officers will not be considered for retention unless they have completed 20 years of qualifying service. They will not be removed from their unit until the notice of eligibility to receive retired pay is issued.

SECTION VII. RETIREMENT POINTS AND RETIREMENT.

7-1. General. Members of the Army Reserve who complete 20 years of creditable service toward retirement are notified that they may elect one of three options:

a. Remain in the Ready Reserve and continue to perform paid or unpaid active duty for training and/or inactive duty for training, or remain on the Active Status List of the Standby Reserve and continue to perform unpaid training to accumulate retirement points. A reserve soldier must earn at least 50 points annually to remain on active status.

b. Transfer to the Retired Reserve.

c. Request discharge from the Reserves.

d. In any of the three instances above, soldiers are entitled to retirement pay upon application at age 60.

7-2. Eligibility (AR 135-180, para 2-8; AR 140-185; compare NGR 640-1).

a. Creditable service. Reservists are entitled to one year of creditable service when they obtain at least 50 retirement points within a one year period. Retirement points are accumulated as follows:

(1) One point for each day of active duty or active duty for training up to 365/366 points per year.

(2) One point for each drill attended.

(3) Fifteen points for reserve membership.

(4) Limits may be established upon the number of combined drill and membership points which may be counted.. Qualifying year. In addition to having creditable service, it takes 20 qualifying ("good") years of service for eligibility for retired pay. A qualifying year is not the same as a calendar year. A qualifying year is a retirement year in which the soldier earned at least 50 points. Each soldier has a retirement year (RY), normally established on the date of initial entry or reentry (after a break in service) into a Reserve Component. (See AR 140-185, para. 1-4) For example, if an individual entered reserve service on 14 October, the retirement year would run from 14 October to 13 October. The retirement year end (RYE) date would be 13 October. If a soldier earned less than 50 points, the year will not count toward the 20 qualifying years required to be eligible for retirement. However, the retirement points earned will be credited toward the total number of points used to compute the soldier's retirement pay.

c. Notice of Eligibility (AR 135-180, para. 2-3). A soldier will receive an official Notice of Eligibility from

ARPERCEN within a year after completion of twenty qualifying years of service. Included with this notice is information on the Reserve Components' Survivor Benefit Plan and the necessary option election forms. Points earned after receipt of the Twenty Year Letter are added to the retirement point total without regard to additional qualifying years. The ARPERCEN Retirement Points Accounting Branch can be reached at ARPC-PAR-P, 1-314-538-0535.

7-3. Retirement Points. Retirement points may be earned by USAR soldiers for active duty (AD), or while in an active Reserve status for active duty for training (ADT), initial active duty for training (IADT), involuntary active duty for training (involuntary ADT), annual training (AT), inactive duty training (IDT), Reserve membership, and for other specified activities.

a. Criteria for awarding retirement points.

(1) Personnel on AD, ADT, IADT, involuntary ADT, or AT are awarded one point for each calendar day while they serve in such capacity and may not be awarded additional points for other activities while in such status.

(2) AR 140-185, Table 2-1 provides criteria for award of retirement points for IDT performed in accordance with AR 140-1. Most types of IDT are covered by one of the following rules on required duration of IDT and calendar day limitations on points. A maximum of 75 points is permitted for IDT type points from all sources in one retirement eligibility year.

(a) Four-hour rule. One point for each scheduled 4-hour period of IDT at UTA, RST, ET, ATA, or makeup assembly. Maximum of 2 points in 1 calendar day.

(b) Two-hour rule. One point for each 2 hour or greater period. Two-hour aggregates of shorter periods may be used, except in the case of 2-hour unit training assemblies. Maximum of 1 point in 1 calendar day.

(c) Two/eight-hour rule. One point for each 2 hour or greater period. Two-hour aggregates of shorter periods may be used except in the case of 2-hour unit training assemblies. Award of a second point in the same day requires additional hours to bring the day's total to a minimum of 8. Maximum of 2 points in 1 calendar day.

(d) An exception to the rule of awarding a maximum of 2 points for IDT in 1 calendar day is the completion of correspondence courses under rule 4 in Table 2-1, AR 14- = 185

b. **Records.** The various forms used to record the award and entitlement of retirement points are described below.

(1) **DA Form 1379 (U.S. Army Reserve Components Unit Record of Reserve Training).** This is a SIDPERS - USAR output roster listing soldiers assigned or attached to Reserve units, IMA Detachments, and reinforcement training units or USARF school student detachments. This form is used, among other purposes, as a permanent record of retirement points earned (AR 140-185, para. 3-2).

(2) **DA Form 1380 (Record of Individual Performance of Reserve Duty Training)** (AR 140-185, para. 3-3). This form is used to record inactive duty training by:

(a) Unit soldiers performing IDT when pay is authorized and the soldier is not present to sign his/her DA Form 5350.

(b) Unit soldier is attached to another USAR unit for 89 or fewer days. The unit of attachment will prepare DA Form 1380 and forward to unit of assignment for recording attendance on DA Form 1379.

(c) Soldiers under the jurisdiction of ARPERCEN who are attached for retirement points only to USAR TPUs, ARNGUS units, or to another service or component for training. However, soldiers attached for retirement point credit to RTUs, USAR school student detachment and IMA detachments are reported on the DA Form 1379 for those units.

(d) Non-unit soldiers performing other inactive duty training for retirement points as noted in Table 2-1, AR 140-185.

(e) Instructors in USAR schools performing appropriate scheduled training under an approved individual instructor yearly training schedule when IDT pay is authorized. DA Form 1380 is not required when individual performance of USAR school instruction is documented with a sign-in roster.

(3) **DA Form 2328 (Record of Army Extension Courses Completed).** This form is used to report the number of course credit hours creditable to soldiers, both assigned and unassigned to units, for satisfactory course completion during a retirement year. Machine prepared letters may be used instead of DA Form 2328 by commands having data processing capability. (AR 140-185, para. 3-4)

(4) **DD Form 214 (Certificate of Release or Discharge from Active Duty).** This form is issued to all individuals at the time of release from the Active Army or Active Duty Guard Reserve. It is also issued to USAR soldiers who complete 90 or more consecutive days of ADT or IADT. Retirement points are granted at 1

per day for the period from the date of entry through the date of release from active duty. (AR 140-185, para. 3-7).

(5) DA Form 3593 (Army Reserve Retirement Credit Card). This form is used to maintain a record of a soldier's accumulated retirement points. The Retirement Credit Card Roster provides unit commanders with a means of controlling the closing out and disposition of the DA Form 3593 for the previous retirement year (AR 140-185, para. 3-5).

(6) Annual statement of Retirement Points. This statement is a permanent record of the total retirement points earned during a retirement year and also describes if the year is a qualifying year for retirement. Soldiers may request correction of errors in this statement (AR 140-185, para. 3-6).

7-4. Retirement Pay. Monthly reserve retirement pay is computed as follows (AR 135-180, para. 2-11):

a. The total number of retirement points earned by the Reservist and divide by 360. This figure equals the number of years of service for Reserve retirement pay computation purposes.

b. Multiply the number of years of service by 2.5 percent.

c. Take the percent, as determined in Subparagraph b above, and multiply that by the base pay of an active duty soldier of the same grade and length of service. This number should be the retirement pay. Use active duty pay rates payable on effective Date of retirement (AR 37-104-1, para. 6-7).

d. For example, an O-6 with 30 years service and 3800 retirement points would have retirement pay of \$1,218.13 per month:

$$(3800 \div 360 = 10.56 \times .025 = .26 \times 4685.10 = 1218.13)$$

7-5. Transfer to the Retired Reserves. Eligible soldiers must request transfer to the Retired Reserves and meet one of the criteria set forth in AR 140-10, para. 6-1, to include:

(1) Entitled to receive retired pay from the Armed Forces because of prior military service.

(2) Completed a total of 20 years of active or inactive service in the Armed Forces.

(3) Medically disqualified for Active Duty (AD) resulting from a service-connected disability.

(4) Appointment was based on the condition that the soldier immediately apply for transfer to the Retired Reserve.

SECTION VIII. AWARDS.

8-1. General. The Department of the Army Military Awards Program provides tangible recognition for acts of valor, exceptional service or achievement, special skills or qualifications, and acts of heroism not involving actual combat (AR 600-8-22).

8-2. Service Medals And Ribbons. Some of the service medals and ribbons which can be awarded to reserve judge advocates are described below.

a. The Army Reserve Components Achievement Medal is awarded to reservists who have exhibited exemplary behavior, efficiency, and fidelity over a period of 3 qualifying years while serving in the IMA program, troop program unit, or Army National Guard (AR 600-8-22, para 4-14, 4-18). IMA officers who are eligible should contact ARPERCEN, Awards Branch, ARPC-SFS-I.

b. The Armed Forces Reserve Medal is awarded to qualifying reservists at the 10 and 20 year points of honorable and satisfactory service (AR 600-8-22, para. 5-7).

c. The Army Reserve Components Overseas Training Ribbon may be awarded to reservists for successful completion of Annual Training or Active Duty for Training (not on extended active duty) for at least 10 consecutive duty days on foreign soil (AR 600-8-22, para. 5-3).

d. The National Defense Service Medal was awarded to all soldiers who served on active or reserve duty from 2 August 1990 through the present. (AR 600-8-22, para. 2-10(a), 2-10 (c)). The Southwest Asia Campaign Medal was awarded to all soldiers who served in the theater of operations from 2 August 1990 through the present (AR 600-8-22, para. 2-14). The regulation contains some restrictions on the types of service which constitute qualifying service for these awards. The closing dates for these awards should be widely announced when it occurs.

8-3. Military Decorations. The Legion Of Merit, Meritorious Service Medal, Army Commendation Medal, and Army Achievement Medal may all be awarded to members of the Reserve Component.

Refer to Table 8-1 attached for a detailed list of United States Military Decorations.

8-4. Retirement Awards. Recommendations for retirement awards should be submitted at least six months in advance of the MRD.

a. The MUSARC Staff Judge Advocate should be aware of JA retirements within the organization and should suggest to commanders and supervisors appropriate awards at the MRD of any Judge Advocates in their units.

b. For IMAs assigned to OTJAG and its FOAs, the POC for processing of retirement awards is the designated IMA control officer of the agency.

c. For IMAs assigned to active Army units, the POC for retirement awards will be designated by the senior Active Component JA for the activity.

8-5. Procedure. Recommendations for decorations should be submitted on DA Form 638. (AR 600-8-22, para. 3-18). Recommendations for awards will be forwarded through command channels to the appropriate approval authority. Each intermediate commander will recommend approval or disapproval; reasons should be stated if disapproval is recommended.

A single service medal or ribbon request should be submitted on a DA Form 4187 through channels to the servicing personnel officer (AR 600-8-22, para. 5-21(f)). Supporting documents should accompany the request.

8-6. Letters Of Commendation And Appreciation. Acts or service which do not meet the criteria for decorations may be recognized by letters of commendation or appreciation. Copies of each letter of commendation or appreciation will be distributed to the reserve judge advocate's Military Personnel Records Jacket/ Official Military Personnel File IAW AR 600-8-104 (AR 600-8-22, para. 10-15).

SECTION IX. BENEFITS.

9-1. General. Reservists are eligible for numerous Federal benefits and entitlement due to their Reserve Component membership. Federal benefits are divided into four categories: Benefits for inactive duty for training (IDT); active duty for training and active duty (ADT, ADSW, AT); Retired Reserve under age 60; and Retired Reserve age 60 or above.

a. Inactive duty for training (IDT). Benefits for Reservists resulting from their inactive duty for training usually include: Serviceman's Group Life Insurance (SGLI); unlimited military exchange privileges; limited commissary privileges; access to military clothing sales stores; access to open mess facilities, post theaters, and transient billets (if available); medical aid; space-available air transportation (within CONUS, Alaska, Hawaii, and Puerto Rico); and authorized survivor benefits; medical care for injuries incurred while traveling to and from drill; incapacitation pay for lost income, and military disability benefits.

b. Active duty for training and active duty (ADT/AD). Benefits for Reservists on active duty or active duty for training usually include: access to most military and post facilities, including exchange and commissary facilities; open messes, etc.; limited medical and dental care; and recreational and entertainment facilities.

c. Retired Reserve.

(1) Retired Reserve less than 60 years old ("Gray Area" retirees). When a Reservist completes at least 20 years of service and transfers to the Retired Reserve, he temporarily loses some of his Federal benefits until reaching age 60. Benefits lost include: The opportunity to earn retirement points; drill pay and allowances; medical and dental care.

(2) Federal benefits available to Retired Reserve before reaching age 60 include: Space-available air transportation within CONUS, Alaska, Hawaii, and Puerto Rico; the option to continue SGLI coverage; indefinite retention of commission for officers; the opportunity to join officer and NCO clubs; and the opportunity to wear the military uniform at appropriate celebrations and military activities; full military exchange, limited commissary privileges; and, recreational and entertainment facilities. Retired Reservists continue to carry their red ID card until reaching age 60.

(3) Upon reaching 60, Reservists receive their Retired Reserve (blue or gray) ID cards and accrue most of the same benefits active duty retired soldiers have earned.

TABLE OF USAR BENEFITS

BENEFIT	IDT ASSEMBLY	AD, ADSW, AT, ADT, IADT	RETIRED RESERVE (UNDER 60)	RETIRED RESERVE (60 & OVER)
Pay and Allowances	Basic pay only	Basic pay, BAS, BAQ, special pay *	No	Retired or retainer pay
Commissary	Limited	Yes	Limited	Yes
Retirement Points	1/UTA **	1/day (Max 365/366/year)	No	No
Space-A Travel	CONUS/HI/AK/P R/VI/GU	Worldwide	CONUS/HI/AK/P R/VI/GU	Worldwide
Legal Assistance	Limited	Yes	Limited	Yes
Transient Billeting	If Available	Yes	If Available	If Available
Military Postal Facilities	No	Yes	No	Yes (CONUS)
Post Facilities	Limited	Yes	Yes	Yes
Wearing of Uniform	As Required	As Required	When Appropriate	When Appropriate
Military Red Cross Assistance	No	Yes	No	No
SGLI	Yes	Yes	Yes (Premium)	No
Military Death Gratuity	Yes	Yes	No	No
Military Medical/Dental	Medical only if duty-related	Yes	No	Yes
VA Medical/Dental	If injured in line of duty	If diseased or injured in line of duty	If eligible (prior service)	If eligible (prior service)
TRICARE	No	Yes, for dependents if on AD, ADSW for more than 30 days	No	Until age 65
Military Burial Assistance	If duty related	Yes	No	Yes
Survivor Benefit Plan	Yes, with 20 years service, if selected	Yes, with 20 years service, if selected	Yes, with 20 years service, if selected	Yes, with 20 years service, if selected

* if authorized

** may be limited to maximum amount per year

Benefits available to RC members in each of the four categories shown above include:

Exchange and Military Clothing Sales privileges

Opportunity to join Officer/NCO clubs

Retention of commission by Officers

Use of post theaters, recreational facilities and libraries

Burial flag

9-2. Modified Reserve Component Commissary Entitlement Program.

All Reserve Component soldiers are authorized to use the commissary for up to 12 days annually at any time during the year in addition to unlimited use while on active duty. When not on active duty reserve members are required to have DD Form 2529, U.S. Armed Forces Commissary Privilege Card to shop. This also applies to "Gray Area" retirees, with 20 years qualifying service but under the age of 60.

9-3. Exchange Facilities (PX/BX etc.)(AR 60-20, para. 2-9). Reservists have full, unlimited military exchange privileges including use of the exchange catalog.

9-4. Life Insurance Programs (38 U.S.C. 1965-1977; AR 600-8-2; see also VA Pam 29-75-1).

a. Servicemen's Group Life Insurance (SGLI) Program (AR 600-8-2, para 11-8 et seq.).

(1) Coverage is based on the duty status of the soldier. The maximum coverage of \$200,000 is either automatic (unless waived or reduced by written request) or contingent upon the soldier's compliance with enrollment criteria required by duty status.

(2) Enrollment. Active Army, Active Guard Reserve, and troop program unit soldiers are enrolled in SGLI by the U.S. Army Finance and Accounting Center through payroll deduction. Individual Ready Reserve (IRR) soldiers are insured upon attachment in a non-pay status, for retirement points, to a USAR unit/organization requiring the performance of at least 12 scheduled inactive duty for training (IDT) periods annually. Individual Mobilization Augmentation (IMA) soldiers, upon attachment to active Army units/agencies, are enrolled in the SGLI program when enrollment criteria are met. Enrollment criteria include scheduling of the soldier's position for at least 12 IDT periods annually, and the verification of the scheduling of the position by the active Army unit/agency commander.

(3) Part time SGLI coverage is available to soldiers who perform Active Duty for Training for less than 30 days or do not qualify for full time coverage. Soldiers with part time coverage are insured only during specified duty periods and while proceeding to or from the place of duty.

(4) Soldiers who are not attached in a non-pay status for retirement points but are assigned to, or on application are eligible for assignment to the Retired Reserve (have completed 20 years of creditable service; have received a 20-year letter; and have not reached age 60), may apply for Retired Reserve coverage under

SGLI through the Office of Servicemen's Group Life Insurance. According to its instructions, premium payments are made directly to OSGLI, 213 Washington Street, Newark, New Jersey 07102-2999. Further inquiries can be made by calling 1-800-419-1473.

b. Veterans' Group Life Insurance (VGLI) (AR 600-8-2, para. 11-37 et seq.).

(1) VGLI is administered by the Office of Servicemen's Group Life Insurance (OSGLI), and supervised by the Veterans Administration. Retired reservists or members of the Ready Reserve who qualify for full time coverage do not qualify for VGLI.

(2) Information is available from the nearest VA office or OSGLI, 213 Washington Street, Newark, New Jersey 07102-2999 (1-800-419-1473). Soldiers should inquire before the end of their tour of duty or the end of the 120 day extension of SGLI coverage. Soldiers in the following status are eligible:

(a) Soldiers separating from the Active Army or active duty orders for 31 days or more are eligible for 5 year renewable term policy at low cost rates. At the end of the 5 year period, the insured may convert VGLI to an individual commercial life insurance policy at standard rates.

(b) Reservists, while on active duty orders of less than 31 days, who suffer an injury or disability extending their SGLI for 120 days. Such soldiers may convert their SGLI to VGLI during the 120-day period.

(c) IRR soldiers who are eligible for the 5 year renewable term policy and whose renewability is contingent on continued participation in the IRR.

9-5. Survivor Benefit Plan (SBP) (10 U.S.C. 1447 et seq.). The Reserve Component Survivor Benefit Plan is designed to provide retirement eligible reservists and National Guard soldiers an early opportunity to select guaranteed protection for their survivors.

a. RC-SBP (Public Law 95-397, 1 October 1978) extended eligibility for coverage under the Survivor Benefit Plan (10 U.S.C. §§1447-1455) to reservists who are eligible for retirement (completion of 20 years of qualifying service) but who have not attained age 60. ARPERCEN (PAR-SCB) is the proponent for administration of RC-SBP for all Army Reserve and Army National Guard soldiers.

b. When ARPERCEN issues a letter of Notification of Eligibility for Retired Pay at Age 60 (20 year letter), soldiers are mailed materials required to elect coverage under RC-SBP by certified mail. The package contains an information letter, instructions, RC-SBP cost tables, and a blank DD Form 1883, Survivor Benefit Plan Election Certificate. DD Form 1883 must be completed, signed by the soldier and spouse, witnessed by a

disinterested person, and returned to ARPERCEN within 90 calendar days of receipt.

c. Soldiers who are not married and do not have dependent children may designate beneficiaries who have an insurable interest in them. Persons more closely related than cousins are presumed to have insurable interests; otherwise, proof of financial benefit from the continuance of life of the soldier will be required.

Soldiers do not have to make an insurable interest election merely to retain the right to coverage under RC-SBP.

d. A soldier who is not married and has no dependent child at the time he or she attains initial eligibility to enroll in the plan may obtain coverage at a later time if a spouse or dependent child is acquired provided the soldier notifies ARPERCEN and requests an election. Coverage will not be in effect until the soldier has been married for at least one year unless there is earlier issue from that marriage.

e. Army Reservists and Guardsmen who are serving on active duty as members of the Active Guard Reserve (AGR) Program at the time they receive their Twenty Year Letter must decide about their RC-SBP coverage at that time. RC-SBP coverage is available in addition to Servicemen's Group Life Insurance (SGLI) and other benefits. If the AGR soldier does not elect coverage under RC-SBP within 90 days of receipt of his Twenty Year Letter and later does not complete 20 years of active Federal Service, he or she will not be able to obtain Survivor Benefit Plan coverage until he/she reaches 60 years of age and applies for retired pay based on non-regular service.

f. If a designated beneficiary is entitled to Dependency and Indemnity Compensation (DIC) on the record of any soldier, that survivor's annuity will be appropriately reduced as required by 10 U.S.C. §1450(c).

g. Elections must be made within 90 calendar days of receipt of notification of eligibility. The clock starts on the day after the soldier or a representative signs the certified mail receipt. Compliance with the 90 day window is determined by checking the date of the postmark on the envelope in which the DD Form 1883 is returned to ARPERCEN. If the soldier fails to comply within the 90 day period, the election is invalidated and the soldier will not have another opportunity to obtain coverage under the Survivor Benefit Plan until he or she applies for retired pay at age 60. If the soldier does not live to 60, there will be no benefits available to heirs.

h. RC-SBP gives soldiers the opportunity to leave their survivors up to 55% of their base amount of retired pay (less costs) as permanent income until the survivor reaches age 62, at which time the income is reduced to up to 35% of base retired pay. If a surviving spouse remarries before age 55, payment of the spouse's annuity is suspended; however, if the soldier also provided coverage for surviving dependent children,

coverage of the children would not be affected by the spouse's remarriage. If the surviving spouse remarries and is later divorced or widowed, coverage will again be available to that spouse.

i. At age 62, SBP beneficiaries are eligible to receive Social Security Benefits. Since 1957, soldiers have contributed to and have been eligible to receive benefits from the Social Security System. The government, as their employer, matched these contributions; therefore, in enacting SBP law, Congress decided that SBP annuities should be reduced or offset by the value of the soldier's military-earned Social Security wage credits. For soldiers who become retirement eligible on or after 1 March 1986, the Social Security offset has been replaced with a new, two-tiered benefit system. Under the new two-tiered benefit system, the beneficiary will receive up to 55 percent of the base amount selected until age 62 and up to 35 percent after reaching age 62, as computed within the provisions of the statute. For soldiers who became retirement eligible after 1 October 1985, only the two-tiered system will be used. However, 10 U.S.C. 1456 et seq. authorizes the creation of a "Supplemental" SBP, to offset the reduction in benefits when the beneficiary turns 62 (at a cost to the soldier's retired pay).

j. Married soldiers who enroll in SBP with spouse coverage will receive coverage based on full retired pay at the time of retirement unless the soldier's spouse has concurred in writing to another election by the soldier. If a soldier elects to provide less than maximum coverage for a current spouse or elects to provide an annuity for a dependent child (but not for the spouse), spousal consent is required. If former spouse coverage is elected or waived, spousal concurrence is not required; however, the current spouse will be informed of that election and will be prevented from receiving annuity payments..

k. Soldiers may also elect to provide coverage for a former spouse, with or without coverage for a dependent child who was the issue of the prior marriage to that spouse. Recent changes to SBP coverage place former spouse coverage under the same cost and coverage provisions as for spouses. All former spouse elections effective on or after 1 March 1986 will be of this type. No further elections for a former spouse will be permitted under the insurable interest type provisions.

l. Options are available to soldiers who carry less than full coverage on a former spouse (with or without child coverage) and who later remarry: Elect to resume existing coverage, increase coverage (base amount) up to and including full retired pay, or decline to assume coverage for the new spouse. A soldier who remarries may not elect to add child coverage if it was not already in effect, or eliminate child coverage already in effect. Elections on remarriage became effective when the new spouse becomes an eligible beneficiary and

any increase of premiums, with interest, have been paid. Soldiers already in receipt of retired pay must pay to the Finance Center the difference between the costs incurred and the costs that would have been incurred if the new level of participation had been elected originally. Payment of these premiums and interest must be completed before the spouse becomes an eligible beneficiary (one year after the marriage) or the election will be void. In the event of a void election, a refund of the increased premiums and interest will be made and the spousal coverage will be reinstated at the original level. Should the retiree die before completion of payments, the election will be void and any payments and interest paid will be returned to the retiree's estate. Payments may be deducted from retired pay.

m. The Reserve Component Survivor Benefit Plan Board at ARPERCEN will convene to consider applications from soldiers or survivors to correct administrative errors and review the validity of the claim. Questions concerning RC-SBP should be directed to the Survivor Benefit Section (PAR-SCB) at ARPERCEN (1-800-325-8311/1-314-538-5078).

9-6. Medical (AR 135-381, ch.2).

a. Medical care at a uniformed services medical facility.

(1) An Army or Air Force Reservist on active duty (AT/ADT/ADSW) or inactive duty for training (IDT) for any period is entitled to medical and hospital care for a disease or injury incurred or aggravated in the line of duty for that training. Medical and dental care is authorized for an injury or disease which occurred or was aggravated during travel directly to or from duty. Care will not be provided if the injury or disease resulted from the soldier's gross negligence or misconduct.

(2) The medical and dental care is authorized for treatment of injury, disease, or illness until the resulting disability cannot be materially improved by further hospitalization or treatment.

(3) Retired reservists entitled to retired pay may be given medical and dental care in any uniformed service medical facility on a space available basis. There is no charge for outpatient or inpatient care for retired enlisted soldiers. Retired officers pay a subsistence charge for inpatient care.

9-7. Incapacitation Pay and Allowances (37 U.S.C. §204, AR 135-381, ch. 4)).

a. Pay and allowances are authorized if the disability was incurred or aggravated in the line of duty during active duty, inactive duty training, traveling directly to or from IDT, or in the line of duty between

successive periods of IDT while remaining overnight in the area of duty (outside a reasonable commuting distance from the soldier's home).b.

The 1989 Defense Authorization Act changed the rules of eligibility to receive incapacitation pay. Reserve component soldiers who are physically able to perform military duties but have their civilian incomes reduced or eliminated by a service-connected injury or illness, may, upon request, draw a portion of their basic pay, housing allowances, and subsistence allowances at the rates for their pay grade. Military pay is reduced on a dollar-for-dollar basis by civilian wages. Payments continue for up to six months. Payments for more than six months can be allowed by the Secretary of the Army. Under the new rule, soldiers who cannot readily demonstrate a loss of wages (i.e., self-employed or seasonal workers) must submit a copy of their most recent federal income tax form.

c. A service member is not entitled to benefits under the above provisions if the disability is a result of his/her own gross negligence or misconduct.

d. Procedures and formats for processing incapacitation claims are found in AR 135-381, chapter 4.

9-8. Military Disability Benefits (10 U.S.C. 1201-1221; AR 135-381, ch. 3; AR 635-40).

a. **Permanent Disability.** Soldiers who become disabled during military service may be entitled to disability benefits, 10 USC 1201-1221. To receive military disability benefits: 1) the disability must be incurred or aggravated while entitled to basic pay when ordered to active duty (including drills), 2) the disability must not result from the soldier's intentional misconduct or willful neglect, and must not be incurred during a period of unauthorized absence, 3) the disability must be of a permanent nature and stable, and make the soldier unfit to perform the duties of his or her office, grade, rank, or rating, and 4) the Ready Reserve or National Guard soldier must not be performing 10 USC 270 training under orders without his or her consent to make up for a failure to satisfactorily perform required annual minimum training duty.

b. **Duty over 30 days.** Disability retirement, commencing when declared by the U.S. Army Physical Disability Agency (USAPDA) (under The Adjutant General), is awarded to soldiers on active duty for more than 30 days, with either any disability rating under the Department of Veterans' Affairs Schedule for Rating Disabilities (VASRD) and 20 years of active duty service, or a VASRD disability rating of at least 30 percent and either: 1) at least eight years of service (2880 points from good years, 10 USC 1332-1333), 2) a disability incurred in the line of duty, or 3) a disability which was the proximate result of performing active duty. Traveling to duty is covered because orders to active duty (including AT and ADT) are effective on receipt.

c. Duty under 30 days or during IDT. Disability retirement, commencing when declared by USAPDA, is awarded to soldiers with 20 or more years of qualifying service, or to those with a disability rating of at least 30 percent under the VASRD, whose disability was incurred as the proximate result of either 1) performing active duty or inactive duty training for not more than 30 days, or 2) (new in 1992) of traveling directly to or from the place at which such duty is performed, or 3) while remaining overnight in the duty vicinity between successive periods of IDT when outside reasonable commuting distance from the soldier's home.. "Proximate result" is not defined. Nor was the common term "proximate cause" used. AR 635-40 substitutes "performing military duty" for the statutory term "performing active duty." Soldiers who were sleeping in barracks during a drill weekend who became disabled by: 1) falling off an outside second floor stair landing with a rotten wood railing while going to the john in the middle of the night, and 2) being attacked while asleep, have been declared by USAPDA ineligible for benefits because their disabilities have been determined to not be the proximate result of performing military duty.

d. Temporary Disability Retirement List (TDRL). When the disability meets the above criteria, a soldier whose disability is determined not to be permanent and stable, but which may become permanent and stable, is placed on the temporary disability retired list for up to five years, with re-evaluations at least every 18 months. Re-evaluation may result in a determination of permanent disability retirement, separation, or fit to return to duty. A soldier on the temporary disability retired list who returns to fitness may be returned to duty only with his or her consent.

e. Disability separation. A soldier is separated from the service with disability severance pay when the soldier meets the above criteria, but either: 1) the disability is less than 30 percent, or 2) the soldier is on active duty for more than 30 days, and the disability is at least 30 percent and not in line of duty, and not the proximate result of performing active duty, and the soldier has less than eight years of years of service (2880 points from good years). Disability severance pay is two months pay for every year (360 points from good years) of active duty (but not more than 12), disregarding less than six months and counting six months (180 points from good years) or more as a full year. A reserve soldier entitled to separation who has 20 years reserve service (7200 points from good years) may choose to be placed on the reserve retired list in lieu of disability severance pay.

f. Medical Evaluation Boards (MEB). A Medical Evaluation Board (MEB) of military doctors evaluates the soldier and makes a recommendation on medical fitness for duty to a Physical Evaluation Board (PEB). Three

members of the PEB evaluate each case. 10 USC 1214 provides that, "No member of the armed forces may be retired or separated for physical disability without a full and fair hearing if he demands it." After the hearing before the PEB, further appeal may be available to USAPDA, the Army Disability Rating Review Board (ADRRB), the Army Board for Correction of Military Records (ABCMR), and the U.S. Court of Federal Claims (money damages) or the Federal District Court (up to \$10,000 and equitable relief). A provision in AR 635-40 that, "In order to ensure fair and independent decision making the president of the PEB shall not rate the members," was deleted by a memo in 1992.

g. Other disability benefits sources. Soldiers who receive military disability can also apply for disability benefits from the Department of Veterans Affairs, which granted disability benefits under the same VASRD. When veterans believe they are totally and permanently (at least one year) disabled they can apply for Social Security disability.

9-9. Death Benefits (AR 135-381, ch. 6; AR 600-8-1; see also DA Pam 608-4).

Soldiers who die while in a duty or travel status may qualify for some or all of the benefits listed in AR 135-381, chapter 6. Personal representatives and/or survivors should refer to the authorities and references listed therein.

9-10. Feres Doctrine. As stated in a recent Ninth Circuit Court of Appeals case:

"The Feres doctrine is an ever-expanding, judicially created exception to the broad waiver of sovereign immunity represented by the Federal Tort Claims Act. In *Feres v. United States*, 340 U.S. 135 (1950), the Supreme Court held that members of the armed services could not maintain actions against the United States for injuries that 'arise out of or are in the course of activity incident to service.' Id. at 146. The three stated rationales underlying the Feres doctrine, as expounded in *Feres* and subsequent cases, are: '(1) the distinctly federal nature of the relationship between the government and members of its armed forces, which argues against subjecting the government to liability based on the fortuity of the situs of the injury; (2) the availability of alternative compensation systems; and (3) the fear of damaging the military disciplinary structure.'

Atkinson, 825 F.2d at 204. *Washington v. U.S.* unpublished, 1993 U.S. App. Lexis 30678.

In a recent Ninth Circuit cases reservist one, who together with reservist two, had slept overnight in the reserve center and gone to get breakfast and donut before formation was held not prevented by the Feres intra-military immunity bar recognized in that circuit from suing the estate of the reservist two, who was driving the

car in which both died. *Green v. Hall*, 8 F.3d 695 (9th Cir. 1993). In another recent Ninth Circuit case a reservist, who was not on reserve status at the time of infection with HIV by an active duty sailor, was barred by *Feres* from suing the United States under a negligent supervision theory because "...to permit this type of suit would mean commanding officers would have to stand prepared to convince a civilian court of the wisdom of a wide range of military and disciplinary decisions..." and the commander was immune from the court's "second-guessing." *Washington*, *supra*.

Most recently, the 9th Circuit revisited *Feres* in the case of *Dreier v. U.S.*, 106 F.3d 844 (9th Cir. 1997). *Dreier*, the survivor of a soldier who had fallen to his death on Fort Lewis while off-duty, filed a wrongful death suit against the U.S. under the FTCA. In reversing the trial court's dismissal (under *Feres*), the 9th Circuit extensively analyzed *Feres* and its progeny (primarily in the 9th Circuit) to determine the scope of the "incident to service" criteria (*Dreier*, at 847-855). While not binding outside the 9th Circuit, the discussion provides an excellent starting point for advocates in other circuits involved in *Feres*-type cases.

SECTION X. EMPLOYMENT AND REEMPLOYMENT PROTECTION FOR THE GUARD AND RESERVE.

10-1. General. Members of the uniformed services are protected against discrimination in employment retention and loss of any employment benefits as a result of their Reserve status. This section of the Handbook summarizes the statute, describes requirements on the reservist and provides a resource for assistance. For a more complete discussion refer to The Army Lawyer, DA PAM. 27-50-177, Sept 1987, "Federal Statutory Employment and Reemployment Protection for the Guard and the Reserve" and 15 Am. J. Trial Advoc. 79, Summer, 1991, "WHEN JOHNNY COMES MARCHING HOME AGAIN": THE VETERANS' REEMPLOYMENT RIGHTS ACT AND EMPLOYER OBLIGATIONS TO MILITARY RESERVISTS."

Additional information can be obtained from the Office of the Assistant Secretary of Defense, National Committee for Employer Support of the Guard and Reserve, 1555 Wilson Blvd., Suite 200, Arlington, VA 22209-2405 (1-800-336-4590 / 1-703-696-1400).

10-2. Statute. The pertinent provisions of the Act providing reemployment rights and other employment protection are set forth below.

a. 38 U.S.C. §4311.

38 U.S.C. §4311(a) provides that protected individuals cannot be denied hiring, retention in employment, promotion or "any benefit of employment" because of any obligation as a member of a uniformed service. This section was enacted to prevent discrimination against Reserve Component soldiers who attend drills or annual training.

b. 38 U.S.C. 4312. This section furnishes reemployment protection for any person whose absence from his/her employment is caused by serving in a uniformed service. To qualify for these reemployment rights, (1) the individual must provide the employer with advance notice of service (unless impossible or prevented by military necessity); (2) the cumulative length of all service-caused absences from that employer cannot exceed 5 years (with certain exceptions); and (3) the individual must report or apply for reemployment to the employer after completion of uniformed service within the time periods set forth in subsection (e) of the statute. Those time periods are determined by the length of uniformed service, and failure to report or apply for reemployment within the prescribed may subject the individual to rules and policies of the employer from which he/she may otherwise have been protected. An employer may avoid reemploying the individual if (1) changed circumstances make reemployment impossible or unreasonable; (2) reemployment

would impose an undue hardship on the employer; or (3) the employment was for a brief, nonrecurrent period with no reasonable expectation that it would continue indefinitely or for a significant period.

c. 38 U.S.C. 4313. This section sets forth the types of jobs to which the individual returning from uniformed service is entitled upon reemployment. It also addresses such issues as a returning person's qualifications to perform job duties; reasonable efforts by the employer to qualify or accommodate returning workers; seniority, status and pay; and the effects of service-related disabilities on returning workers.

d. 38 U.S.C. 4316. This section places workers who leave their jobs for uniformed service on a "furlough" or "leave of absence" status regarding their civilian employers. It addresses the worker's right upon reemployment to seniority and seniority-determined rights and benefits which he/she otherwise would have had if he/she had remained continuously employed. It also protects returning workers from being discharged without cause for 1 year (if service was for more than 180 days) or 180 days (if uniformed service was more than 30 but less than 181 days).

e. 38 U.S.C. §4323. This section establishes enforcement procedures for a person claiming a right or benefit under this chapter against a State or private employer by conferring jurisdiction upon the United States district courts. . The Court may award reasonable attorney fees, expert witness fees, and other litigation expenses to persons protected by the Act and who are prevailing parties in the action or proceeding. No fee or court costs are to be taxed against the person seeking benefits under the Act. Suits may be filed in any district where a private employer maintains a place of business or, if against any state or political subdivision thereof, where such entity exercises its authority or carries out its functions. State statutes of limitation are expressly deemed inapplicable to proceedings under the Act. Possible remedies include reinstatement, back pay, and damages.

f. 38 U.S.C. §4314, 4315, 4324, & 4325. These sections establish reemployment rights for employees of the Federal government and the District of Columbia and authorizes the Director of the Office of Personnel Management to direct other federal agencies to comply with the Act. Specific provisions affecting federal employees may also be found in Title 38 of the Code of Federal Regulations and at chapter 353 of the Federal Personnel Manual.

g. 38 U.S.C. §4321. This section establishes the enforcement procedures for the statute. It

authorizes the Secretary of Labor to assist persons in securing their rights under the Act. The assistance is provided through the Veteran's Employment and Training Service ("VETS") (1-800-442-2838). VETS may refuse to assist veterans who are represented by counsel. Legal Assistance Attorneys should beware of holding themselves out to VETS or to employers as the veteran's "counsel" (cf. AR 27-3, para 3-6(e)). . h.

38 U.S.C. &4322. If the Secretary of Labor is unable to achieve a satisfactory resolution with the employer, the Secretary shall notify the person who submitted the complaint of the results of the Secretary's investigation and of that person's entitlement to proceed under the enforcement of rights provisions provided under section 4323 or section 4324.

1. Other provisions of the statute address the maintenance of insurance and pension plans while on active duty.

10-3. Requirements for Protection.

a. If the performance of active duty for training or inactive duty for training will cause an absence from the work place during a scheduled working period, the employee, to qualify for protection, must request a leave of absence from the employer. Although the Act does not require that the request be in writing, it is to the reservist's advantage to make a written request. The request for a leave of absence is primarily a notice requirement. The statute does not permit the employer to deny the request or to require that the employee reschedule the training to a time more convenient for the employer. Although the statute does not specify a minimum or maximum time for giving the notice, the employee should give it as far in advance as possible to minimize the impact of the absence on the employer's operation.

b. The Act does not specify how often an individual can request military leave for active duty for training or inactive duty for training. The right to obtain a leave of absence should not be abused and it is advisable that each military leave have a bona fide military justification.

10-4. DOD National Committee for Employer Support of the Guard and Reserves (NCESGR). The NCESGR ombudsman and staff is available to assist any reserve component soldier or employer with problems concerning training and employment protection. NCESGR's toll free telephone is (800) 336-4590 or call collect (703) 696-1400, or call the Director of Field Operations (703) 676-1390, 1555 Wilson Boulevard, Suite 200, Arlington, VA 22209-2405.

10-5. The Veterans' Employment and Training Service (VETS) (1-800-442-2838) has primary responsibility to investigate claims of USERRA violations. VETS may refuse assistance to a veteran who is already represented by counsel. Legal Assistance Attorneys should beware of holding themselves out to VETS or to employers as a veteran's "counsel". Cf. AR 27-3, para 3-6(e). VETS may be reached at <http://gatekeeper.dol.gov/dol/vets>.

APPENDIX A.

Reserve Component Terms

ADSW - Active Duty for Special Work. ADSW is for temporary projects in support of the RC.

AGR - Active Guard and Reserve. RC soldiers serving on full time active duty in support of the USAR or ARNG.

ARCOM - Army Reserve Command. A TDA unit commanding non-divisional USAR units in a geographical area.

Commanded by a major general, with a colonel as SJA. There is one ARCOM (7th in Germany). The remaining 21 ARCOMs have been reorganized into 12 RSCs.

RSC - Regional Support Command. Area peacetime commands, usually commander by a major general. These commands are responsible to see that their subordinate commands are trained and ready to be mobilized.

MUSARC - Major U. S. Army Reserve Command. A collective term used to describe an ARCOM or GOCOM (General Officer Command) which is directly subordinate to USARC (U. S. Army Reserve Command).

USARC - U. S. Army Reserve Command. Command and control headquarters for USAR TPU (Troop Program Units). USARC is commanded by the Chief, Army Reserve (CAR), but the day-to-day supervision is provided by the Deputy at USARC headquarters in Atlanta. Special operations units and OCONUS units are not under the control of USARC.

AT (ANNUAL TRAINING)- Annual training is 12 to 17 days, up to 30 days for special missions.

ATA (ADDITIONAL TRAINING ASSEMBLIES) - ATA are provided to MUSARCs to fund additional drills for specific training requirements.

IMA (INDIVIDUAL MOBILIZATION AUGMENTEE)- Soldiers assigned to a mobilization TDA or TOE of any DOD, DA, or other Federal agency. IMAs usually perform 12 days of annual training with their unit of assignment.

ET (EQUIVALENT TRAINING) - ET is in lieu of regularly scheduled weekend drill training.

FTS (FULL TIME SUPPORT) - FTS are personnel assigned on a full time basis for the purpose of organizing, administering, recruiting, and training the reserve components. FTS personnel include civilians, ARNG soldiers, USAR soldiers, AGR soldiers, and active component soldiers.

GOCOM - General Officer Commands are USAR units commanded by a general officer. GOCOMs may report directly to USARC ie. divisions and support commands, or they may be part of an RSC, ie. MP BDE.

IDT (INACTIVE DUTY TRAINING) - IDT is the monthly drill for RC TPUs. IDT is on the basis of 48 drills per

year (24 drills for a DIMA - Drilling IMAs). These drills are usually held on a weekend - 4 drill periods of 4 hours each. One drill period is called a Unit Training Assembly (UTA) and several drills together are called a MUTA (Multiple Unit Training Assemblies). A weekend drill of 4 UTAs is referred to as a MUTA4. A RC soldier receives 4 days pay for a MUTA4.

IRR (INDIVIDUAL READY RESERVE) - Members of the IRR are soldiers not assigned to TPU or IMA positions. They may still train and can transfer to a TPU or IMA position at another time.

ADT - Active Duty for Training - includes AT (annual training), overseas in a Title 10 status (subject to UCMJ), CONUS in a Title 32 status (subject to state militia laws - many states use UCMJ forms and terms as part of their militia laws).

STARC and TARC - State Area Command and Territory Area Command -50 states, and Guam, Puerto Rico, Virgin Islands, and Washington DC. NGR 10-2, para 3 (2)(f) prescribes that STARCs have, as a post mobilization mission, the duty to, "Provide assistance to military family members in the State which are beyond the dependent support capability of Class 1 installation and other military facilities."

The STARC/IMA Project (using 12 IMA slots from OTJAG) is based on this mission.

NGB - National Guard Bureau - the channel of communications between the states and the Departments of Army and Air Force. The states jealously guard their independence, and states may disregard "suggestions" made by NGB.

YEAR ROUND TRAINING - Instead of doing AT in a continuous 15 day period the 15 days are served a few days at a time over the year. Many NG JAs are on year round training. The STARC/IMA project proposes that USAR IMA training be year round since practically all NG mobilization exercises are conducted during IDT (weekend) training assemblies and not during AT.

GOOD YEAR - In order to receive retirement benefits one must have creditable service and the required number of "qualifying" years. A good year is one in which the individual earns a minimum of 50 retirement points during a service year based on his or her anniversary of entry into service

STATE DEFENSE FORCE, STATE MILITIA, and other - names vary -organized exclusively state militia unpaid volunteers. When National Guard units are federalized these uniformed volunteers take over armories, assist in family support, and may have other roles. The Ohio State Militia wear current military uniforms with red name

tags. Virginia Defense Force wears the old style fatigues.

TAG or AG - "The Adjutant General" - individual appointed by Governor in most states (elected by legislature or popularly in a few). TAG is the commanding general of the air and army national guard forces for state or territory purposes and missions. All 54 state or territory national guards have full time AGR (Title 32) Judge Advocates working directly for the TAG. Each also has a "traditional" (the new term for M-Day) Judge Advocate usually referred to as the TJAG or State JA. The AGRs JAs may be either Army (ARNG) or Air (ANG) National Guard (split is about 60% Army, 40% Air, and their duties are "purple suit").

APPENDIX B.

**OER INFORMATION AND ASSISTANCE
AND
SENIOR RATER PROFILE RESTART PROGRAM**

QSAR:

Commander, AR-PERSCOM
ATTN: ARPC-PRE
9700 Page Boulevard
St. Louis, MO 63132-5200

DSN 892-3600
Commercial (314) 538-3610

ARNGUS:

Director of Personnel
ATTN: NGB-ARP-M
111 South George Mason Drive
Arlington, VA 22204-1382

DSN 327-7111
Commercial (703) 607-7111

AC:

Commander
Total Army Personnel Command
ATTN: TAPC-MSE
200 Stovall Street
Alexandria, VA 22332-0442

DSN 221-9660
Commercial (703) 325-9610/9660